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8	DEFODE	DHE
9	BEFORE THE PHYSICAL THERAPY BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
11		L C N
12	In the Matter of the Accusation Against:	Case No.
13	JEAN MARIE SWAN 150 Rankin Way, #118	ACCUSATION
14	Benicia, CA 94510	
15	Physical Therapist License No. PT 9262	
16	Respondent.	
17		
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Steven K. Hartzell (Complainant) brings this Accusation solely in his	
21	official capacity as the Executive Officer of the Physical Therapy Board of California,	
22	Department of Consumer Affairs.	
23	2. On or about August 15, 1979,	the Physical Therapy Board of California
24	issued Physical Therapist License Number PT 9262 to Jean Marie Swan (Respondent). The	
25	Physical Therapist License was in full force and effect at all times relevant to the charges brought	
26	herein and will expire on May 31, 2005, unless renewed.	
27	///	
28	///	

## **JURISDICTION**

This Accusation is brought before the Physical Therapy Board of
 California (Board), Department of Consumer Affairs, under the authority of the following laws.
 All section references are to the Business and Professions Code unless otherwise indicated.
 Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code states:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

- (d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.
- 6. Section 2661 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

- 7. Section 2661.5 of the Code states:
- (a) In any order issued in resolution of a disciplinary proceeding before the board, the board may request the administrative law judge to direct any

1	licensee found guilty of unprofessional conduct to pay to the board a sum not to	
2	exceed the actual and reasonable costs of the investigation and prosecution of the	
3	case.	
4	(b) The costs to be assessed shall be fixed by the administrative law judge	
5	and shall not in any event be increased by the board. When the board does not	
6	adopt a proposed decision and remands the case to an administrative law judge,	
7	the administrative law judge shall not increase the amount of the assessed costs	
8	specified in the proposed decision.	
9	(c) When the payment directed in an order for payment of costs is not	
10	made by the licensee, the board may enforce the order of payment by bringing an	
11	action in any appropriate court. This right of enforcement shall be in addition to	
12	any other rights the board may have as to any licensee directed to pay costs.	
13	(d) In any judicial action for the recovery of costs, proof of the board's	
14	decision shall be conclusive proof of the validity of the order of payment and the	
15	terms for payment.	
16	FIRST CAUSE FOR DISCIPLINE	
17	(Convictions)	
18	8. Respondent is subject to disciplinary action under sections 2660(d) and	
19	2661 [conviction] in that she has two convictions for driving under the influence of alcohol. The	
20	circumstances are as follows:	
21	2001 Conviction	
22	9. On or about March 22, 2001, a criminal complaint titled <i>People of the</i>	
23	State of California vs. Jean Marie Swan was filed in Superior Court, Butte County, case no.	
24	NCR89321. Count 1 charged respondent with a violation of Vehicle Code section 23152(a)	
25	[driving under the influence of alcohol]. Count 2 charged respondent with a violation of Vehicle	
26	Code section 23152(b) [driving while having a .08% or more blood alcohol content.]	
27		
28		

James F. Reilley and entered a plea of no contest to Count 2, and admitted to a blood alcohol content of .19% at the time of arrest. The Court accepted the plea and dismissed Count 1. Respondent was placed on probation for 36 months, and ordered to report to jail on June 4, 2001 and serve 48 hours in jail. She was ordered to pay a fine of \$1,248.00 plus \$25.00, and pay a restitution fine fund of \$100.00. The Court reserved jurisdiction to order restitution in such amount as may be appropriate upon filing of a request by the victim or District Attorney. Her driver's license was restricted for 90 days per Vehicle Code section 13202.5; she was ordered to report to a Compliance Specialist on June 8, 2001 and attend a Level 1 school. Standard terms of probation were ordered as well.

## 2003 Conviction

- 11. On or about September 6, 2002, a criminal complaint titled *People of the State of California vs. Jean Marie Swan* was filed in Superior Court, Contra CostaCounty, case no. 206307-1. Count 1 charged respondent with a violation of Vehicle Code section 23152(a) Respondent's May 31, 2001 conviction was separately alleged as a prior conviction. The Complaint contained a special allegation pursuant to Vehicle Code section 23578 that respondent had a blood alcohol content of .20% and more at the time of the offense. Count 2 charged respondent with a violation of Vehicle Code section 23152(b) [driving while having a .08% or more blood alcohol content.]
- 12. On or about January 15, 2003, respondent appeared and entered a plea of no contest to Count 1, Vehicle Code section 23152(a) with one prior conviction. The Court accepted the plea and dismissed Count 2. Respondent was sentenced as follows: four years probation, standard terms and conditions, imprisoned for 46 days via electronic home detention. She was ordered to contact Custody Alternative Bureau within 15 days; pay a fine of \$1,378.00, pay restitution fine of \$100.00, probation to terminate upon payment of fine/competion of jail sentence, 20 days jail concurrent in lieu of fine. She was ordered to make restitution as determined by the Court Probation Officer; abstain from alcohol, to report to Post Conviction Drinking Driver's Program within 10 days and comply with its rules and fee

1	requirements. Her driving privilege was restricted for one year to driving to and from school.	
2	13. Therefore, respondent's 2001 conviction for violating Vehicle Code	
3	section 23152(b) [driving while having a .08% or more blood alcohol content], and her 2003	
4	conviction for violating Vehicle Code section 23152(a), [driving under the influence of alcohol]	
5	with one prior conviction are substantially related convictions and cause to discipline her license	
6	pursuant to Business and Professions code sections 2660(d) and 2661.	
7	<u>PRAYER</u>	
8	WHEREFORE, Complainant requests that a hearing be held on the matters herein	
9	alleged, and that following the hearing, the Physical Therapy Board of California issue a	
10	decision:	
11	1. Revoking or suspending Physical Therapist License Number PT 9262,	
12	issued to Jean Marie Swan;	
13	2. Ordering Jean Marie Swan to pay the Physical Therapy Board of	
14	California the reasonable costs of the investigation and enforcement of this case, pursuant to	
15	Business and Professions Code section 2661.5;	
16	3. Taking such other and further action as deemed necessary and proper.	
17	DATED: <u>April 08, 2004</u> .	
18		
19	Original Signed By:	
20	STEVEN K. HARTZELL Executive Officer	
21	Physical Therapy Board of California Department of Consumer Affairs	
22	State of California Complainant	
23		
24	03575160SF 2004AD0002 Swan Accusation.wpd	
25	ces 3/04 date prepared	
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